

AMENDED IN ASSEMBLY AUGUST 9, 2012

AMENDED IN SENATE MAY 10, 2011

AMENDED IN SENATE APRIL 26, 2011

AMENDED IN SENATE APRIL 4, 2011

AMENDED IN SENATE MARCH 22, 2011

SENATE BILL

No. 911

Introduced by Senator De León

(Coauthors: Assembly Members Blumenfield and Portantino)

February 18, 2011

An act to ~~amend Section 53411 of, and to add Section 53411.5 to, the Government Code~~ *add Section 10295.7 to the Public Contract Code, relating to local agency finance public contracts.*

LEGISLATIVE COUNSEL'S DIGEST

SB 911, as amended, De León. ~~Local agency bonds; reports. State contracts; multistate corporations.~~

Existing law authorizing contracting between state agencies and private contractors sets forth requirements for the procurement of goods and services by state agencies.

The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, apportions the business income between this state and other states and foreign countries in accordance with a 4-factor formula based on the property, payroll, and double-weighted sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified

business activities, as defined, business income is apportioned in accordance with a specified 3-factor formula. That law, for taxable years beginning on or after January 1, 2011, allows a taxpayer to elect to apportion its business income in accordance with a single sales factor formula, except as provided, pursuant to an irrevocable annual election, as specified.

This bill would, except as specified, prohibit a state agency from entering into a contract for goods and services with a person or entity that apportions its business income in accordance with the 4-factor formula.

~~Existing law requires the chief fiscal officer of a local agency issuing bonds to file an annual report with the governing body of the local agency with respect to the amount of funds collected and expended generally, and the status of any project required or authorized to be funded from the proceeds of the bonds.~~

~~This bill would, after January 1, 2012, require the chief fiscal officer of a local agency issuing bonds to file the report with its governing body no later than 60 days after the close of the agency's fiscal year. This bill would provide that failure to submit the report on time shall result in a suspension of bond proceeds until the report is submitted.~~

~~This bill would require an issuing local agency, upon request for information about any expenditure of bond proceeds in excess of \$5,000, or expenditures that in the aggregate exceed that amount, to make specified information available with respect to that expenditure or those expenditures.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) California's statewide unemployment rate is currently 10.7
- 4 percent, with nearly 2 million Californians unemployed. Imperial
- 5 County has the highest unemployment rate at 28.2 percent, and
- 6 Los Angeles County has the highest number of unemployed with
- 7 534,200 job seekers.
- 8 (b) Beginning on January 1, 2011, California implemented a
- 9 revised methodology for the calculation of corporate taxes that
- 10 provides certain multistate corporations that apportion their

1 *business income based on property, payroll, and double-weighted*
2 *sales formula, sometimes referred to as the four-factor formula,*
3 *with the ability to annually elect the single sales factor*
4 *apportionment of business income in the determination of taxes*
5 *owed to the state.*

6 *(c) Letting corporations apportion business income using the*
7 *four-factor apportionment formula is a corporate tax loophole*
8 *that unfairly rewards corporations that invest the bulk of their*
9 *payroll and operations out of state and that puts California-based*
10 *businesses at a competitive disadvantage.*

11 *(d) The recent change to corporate tax policy in allowing*
12 *multistate corporations to pick their tax formula has exacerbated*
13 *our ongoing state budget crisis by costing California over \$1*
14 *billion annually in corporate tax revenue. The loss of this revenue*
15 *has resulted in the need to make devastating budget cuts to*
16 *education, health care, and other vital safety net programs.*

17 *(e) In addition to taking advantage of this corporate tax*
18 *loophole, multistate corporate conglomerates are scheming to*
19 *expand that loophole even further by pursuing litigation in*
20 *California to allow them to use an equally weighted three-factor*
21 *formula that gives them an even greater tax break for not hiring*
22 *Californians or basing their product operations here.*

23 *(f) In order to facilitate the ongoing recovery of California's*
24 *economy from the worst fiscal crisis since the Great Depression,*
25 *the state should refrain from entering into contracts with*
26 *corporations that refuse to hire Californians or maintain*
27 *operations in this state but take full advantage of selling their*
28 *out-of-state products here.*

29 *SEC. 2. Section 10295.7 is added to the Public Contract Code,*
30 *to read:*

31 *10295.7. (a) A state agency shall not enter into a contract*
32 *pursuant to this chapter with a taxpayer that apportions its business*
33 *income in accordance with subdivision (a) of Section 25128 of the*
34 *Revenue and Taxation Code.*

35 *(b) Contracts that are necessary to protect the health, safety,*
36 *and welfare of the general public and that can only be fulfilled by*
37 *a taxpayer that apportions its business income in accordance with*
38 *subdivision (a) of Section 25128 of the Revenue and Taxation Code*
39 *shall not be subject to this section.*

1 (c) *The Franchise Tax Board shall disclose whether a taxpayer*
2 *apportions its business income in accordance with subdivision (a)*
3 *of Section 25128 of the Revenue and Taxation Code to a state*
4 *agency for purposes of compliance with this section.*

5 ~~SECTION 1. It is the intent of the Legislature in enacting this~~
6 ~~measure to provide greater transparency and accountability in the~~
7 ~~bond financing process, so the public can readily review how the~~
8 ~~proceeds of taxpayer-authorized bonds are spent.~~

9 ~~SEC. 2. Section 53411 of the Government Code is amended~~
10 ~~to read:~~

11 ~~53411. The chief fiscal officer of the issuing local agency shall~~
12 ~~file a report with its governing body no later than January 1, 2002,~~
13 ~~and at least once a year thereafter. After January 1, 2012, the chief~~
14 ~~fiscal officer of the issuing local agency shall file the report with~~
15 ~~its governing body no later than 60 days after the close of the~~
16 ~~agency's fiscal year. Failure to file the report by the annual deadline~~
17 ~~shall result in a suspension in the expenditure of bond proceeds~~
18 ~~until the report is submitted. The annual report shall contain both~~
19 ~~of the following:~~

20 ~~(a) The amount of funds collected and expended.~~

21 ~~(b) The status of any project required or authorized to be funded~~
22 ~~as identified in subdivision (a) of Section 53410.~~

23 ~~SEC. 3. Section 53411.5 is added to the Government Code, to~~
24 ~~read:~~

25 ~~53411.5. (a) An issuing local agency, upon request for~~
26 ~~information about any expenditure of bond proceeds in excess of~~
27 ~~five thousand dollars (\$5,000), or expenditures that in the aggregate~~
28 ~~exceed that amount, shall make all of the following information~~
29 ~~promptly available for each expenditure of bond proceeds in excess~~
30 ~~of five thousand dollars (\$5,000) that is subject to the request:~~

31 ~~(1) The name and principal location of each recipient of funds.~~

32 ~~(2) The amount of the expenditure.~~

33 ~~(3) The type of transaction.~~

34 ~~(4) The identity of the local agency or authorized entity making~~
35 ~~the expenditure.~~

36 ~~(5) The funding source for the expenditure.~~

37 ~~(6) A brief description of any item or service purchased pursuant~~
38 ~~to the expenditure.~~

1 ~~(b) This section shall not be construed to require the disclosure~~
2 ~~of information deemed confidential or otherwise exempt from~~
3 ~~disclosure under state or federal law.~~

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